COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE

WILMINGTON, DELAWARE 19801

John K. Welch
Judge

June 8, 2010

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Re: *State of Delaware v. Matthew J. Fordham*
Case No.: 0811010537

Date Submitted: May 24, 2010
Date Decided: June 8, 2010

MEMORANDUM OPINION

Dear Counsel:

On Monday, May 24, 2010 a hearing was held in the Court of Common Pleas, New Castle County, State of Delaware on Matthew J. Fordham's ("Defendant") Motion to Suppress filed pursuant to Court of Common Pleas Criminal Rule 12. Defendant alleges in his motion, *inter alia*, that any evidence offered by the State should be suppressed because the arresting officer did not have a reasonable and articulable suspicion "that defendant had committed, was committing, or was about to commit an offense." (Motion, ¶ 2(a)).[1]

[1] The Court has received and reviewed the party's cross-memoranda and the post-trial issues raised in their memoranda.

The Defendant was charged by Information filed with the Criminal Clerk, with one count of Driving Under the Influence of Alcohol on November 16, 2008, 605 Yorklyn Road, New Castle County in violation of 21 *Del.C.* §4177(a).

This is the Court's Final Decision and Order on Defendant's Motion to Suppress. For the following reasons the Court finds there was no reasonable articulable suspicion to order Defendant out of the vehicle and detain him or arrest defendant for a violation of 21 *Del.C.* §4177(a). The Court also finds the Community Care Doctrine (the "Doctrine") has no applicability to the facts of this case. Assuming arguendo, that the Doctrine does, in fact, apply, the Court finds once the defendant was no longer in need of assistance or in peril had been mitigated the caretaking function was over and further detention under the facts of this case was unreasonable by the State. Therefore, the Court **GRANTS** Defendant's Motion to Suppress.

I. The Facts.

Trooper Anthony N. Pantalone ("Trooper Pantalone") testified for the State. He is a Delaware State Trooper out of Troop 6 and was so employed since July 6, 2006. Defendant's counsel stipulated to his qualifications to administer field tests, Horizontal Gaze and other NHTSA Field Coordination tests. Trooper Pantalone testified he has also received specialized training in DUI enforcement, including the HGN, Walk and Turn, Heel to Toe and Intoxilizer Administration. He was so employed on November 16, 2008 and was on duty at 7:30 p.m., the date he encountered the defendant.

Trooper Pantalone was in the area of 605 Yorklyn Road in New Castle County and at 7:30 p.m. was dispatched to a "suspicious vehicle parked in the Wawa parking lot." He arrived at the scene and found the subject unconscious in the right passenger seat with the motor vehicle running and the windshield wipers working. He testified the car as a black Mazda with tag number 96846, Delaware registration and the same was at the Route 41 side of the Wawa parking lot. The subject appeared unconscious or asleep in the right seat and was a white male leaning over towards the console from the right passenger seat. The defendant, however, the Court notes was seated in the passenger seat, not behind the wheel of the motor vehicle.

Trooper Pantalone approached the passenger side door. He opened it and noticed an odor of alcohol emanating from the motor vehicle. He identified the defendant in the courtroom. The defendant appeared unresponsive for one to two minutes while the trooper shook the defendant and the defendant then awoke and spoke directly with the police officer. The defendant answered all of Trooper Pantalone's questions. He also did not appear to be in peril nor had signs of distress after he awoke and answered the officer's questions.

The defendant, when asked informed the trooper that he was not drinking and had not been driving the motor vehicle in question. The defendant told Trooper Pantalone a Michael Gilford was driving and then left the area after they parked at the Wawa.

Upon *voir dire*, Trooper Pantalone testified he received the actual phone call regarding the suspicious motor vehicle from dispatch which was initially received

from an employee of Wawa. Trooper Pantalone testified the defendant was properly parked in the parking space and was in the right passenger seat, not in the driver's seat. There was a flat right tire with some limited right front panel damage to the car. Trooper Pantalone asked the defendant "Are you drinking?" and "Were you driving?" The defendant informed Trooper Pantalone "No" to both questions. Trooper Pantalone testified at this juncture, that he would not have let the defendant leave and the defendant was not, in fact, free to leave.

Trooper Pantalone testified on cross-examination neither RECOM nor any eyewitness could assist him in determining who actually had driven the motor vehicle wherein the defendant was in the passenger seat. No other evidence other than the defendant's statement that his friend, Michael Gilford was driving the motor vehicle was made available by any fact witness during his investigation.

When asked by the prosecution on redirect, Trooper Pantalone testified the defendant was not free to leave. As to what was "going through" Trooper Pantalone's actual state of mind during his investigation, Trooper Pantalone testified he believed he had to determine whether the defendant was of legal drinking age; whether the defendant was intoxicated; and whether it would be safe for the defendant walking on a public roadway. At no time during *voir dire*, direct examination, or redirect examination did Trooper Pantalone provide testimony that he believed the defendant was in immediate peril, distress or need of assistance. As will be set forth below, under the objective standard in *Williams*, the Court would make the same findings. When questioned by defendant's counsel, Trooper

Pantalone testified after he spoke with the defendant and he was not free to leave, he could not state whether a crime had been committed; was about to be committed by the defendant; or was being committed by the defendant when he arrived at the scene at the Wawa.

Trooper Pantalone testified on cross-examination that the defendant was not attempting to walk on a public highway.

II. Defendant's Motion to Suppress.

The argument stated in paragraph 2(a) of Defendant's Motion to Suppress was that there was no reasonable and articulate suspicion for Trooper Pantalone to order Defendant out of the vehicle. Defense counsel argued at the suppression hearing that the Officer did not have authority to detain defendant because he thought there was no crime suspected about to be committed, or had been committed by the defendant. *See*, 10 *Del.C.* §1902. The Court notes that the core of the defense argument was that sleepiness/sleeping in a motor vehicle is not necessarily by itself a crime. Nor did Trooper Pantalone state sleeping in a motor vehicle was a Title 11, or Title 21 offense. The issue before the Court is whether Trooper Pantalone had reasonable articulable suspicion prior to asking Defendant to get out of the vehicle. Second, the Court must determine if the Community Care Doctrine applies to the instant facts, and if so, once the officer was assured the defendant was not in peril, or in need of assistance, was the caretaking function over, and was further detention warranted of the defendant.

III. The Law.

The Fourth Amendment of the Delaware and the United States Constitutions protects an individual's right to be free from searches and seizures. U.S. Const. amend. IV; Del. Const. Art. I §6. Accordingly, a police officer must justify any seizure of a citizen, with the level of justification varying depending on the magnitude of the intrusion. *State v. Arterbridge*, Del. Super. Ct., Cr. A. Nos. 94-08-0845 and 94-08-0846, 1995 WL 790965, Barron, J. (December 7, 1995); *See, U.S. Hernandez*, 854 F.2d 295, 297 (8th Cir. 1988); *See also, State v. Dinan*, Del. Com. Pl., Cr. A. Nos. MN98-07-0111 and MN 98-07-0112, 1998 WL 1543573, Welch, J. (October 15, 1998) (where this Court applied this standard to a motor vehicle stop by a police officer).

Reasonable and articulable suspicion is required for a seizure of a citizen. A police officer may detain an individual for investigatory purposes for a limited scope, if supported by reasonable and articulable suspicion of criminal activity. *Jones v. State*, 745 A.2d 856 (Del. 1999) (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). A determination of reasonable and articulable suspicion must be evaluated by the totality of the circumstances as viewed though the eyes of a reasonable, trained police officer under the same or similar circumstances, combining objective facts with the officer's subjective interpretation of them. *Id.*[2]

[2] The Delaware Supreme Court defines reasonable and articulable suspicion as an officer's ability to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. *Id.* In the absence of reasonable and articulable suspicion of wrongdoing, detention is not authorized. *State v. Munzer*, Del. Com. Pl., No. 0805019677, 2008 WL 5160105, Welch, J. (December 9, 2008); *see, e.g., State v. McKay,* Del. Com. Pl., No. 0705027402, 2008 WL 868109, Welch, J. (April 2, 2008) (where the Court held there was no reasonable suspicion where the officer viewed the defendant's car speeding in the opposite direction but there were no radar logs to substantiate this allegation); *State v. Jacobs*, Del. Com. Pl., No. 0310022057, 2004 WL

There are three categories of police-citizen encounters. *Hernandez*, 854 F.2d at 297. First, the least intrusive encounter occurs when a police officer simply approaches an individual and asks him or her to answer questions. This type of police-citizen confrontation does not constitute a seizure. *Robertson v. State*, 596 A.2d 1345, 1351 (1991) (citing *Florida v. Bostick*, 501 U.S. 429, 434 (1991)). Second, a limited intrusion occurs when a police officer restrains an individual for a short period of time. This Terry stop encounter constitutes a seizure and requires that the officer have an "articulable suspicion" that the person has committed or is about to commit a crime. This is also codified under Delaware law, 11 *Del.C.* §1902(a), which reads, "a peace officer may stop any person abroad, or in a public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand the person's name, address, business abroad and destination." Third, the most intrusive encounter occurs when a police officer actually arrests a person for commission of a crime. Only "probable cause" justifies a full-scale arrest. *Hernandez*, 854 F.2d at 297.

The stop of an automobile triggers the second category of a police-citizen encounter which requires that the officer have "reasonable articulable suspicion" for the seizure. *Delaware v. Prouse*, 440 U.S. 648 (1979). A seizure is quantified when the

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2378814 (October 6, 2004) (no reasonable suspicion where officer alleged defendant's vehicle had non-working brake lights and defendant failed to signal, but both claims were omitted from the police report); *contra, State v. Lahman,* Del. Super. Ct., Cr. No. 94-10011118, 1996 WL 190034, Cooch, J. (January 31, 1996) (officer's observation of a beer can on the roof of the car and a child on driver's lap constituted reasonable suspicion for stop of the vehicle); *State v. Dinan*, Del. Com. Pl., Cr. A. Nos. MN98-07-0111 and MN 98-07-0112, 1998 WL 1543573, Welch, J. (October 15, 1998) (where reasonable suspicion was found for motor vehicle violations, including here where defendant's car crossed the double-yellow line ten times during officer observation).

police encounter "convey[s] to a reasonable person that he or she is not free to leave." *U.S. v. Mendenhall*, 446 U.S. 544, 545 (1980); *Florida v. Royer*, 460 U.S. 491, 502 (1983). "The Court must make this decision objectively by viewing the totality of circumstances surrounding the incident at that time." *State v. Munzer*, Del. Com. Pl., No. 0805019677, 2008 WL 5160105, Welch, J. (December 9, 2008) (quoting Mendenhall, 446 U.S. at 545).[3]

In order for the Court to establish whether reasonable suspicion exists, the totality of the circumstances surrounding the search or seizure must be scrutinized. The Delaware Supreme Court has declared "that the determination of reasonable suspicion must be evaluated in the context of the totality of the circumstances as viewed from the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with an officer's subjective interpretation of those facts." *State v. Bloomingdale*, Del. Com. Pl., Cr. A. No. 99-09-3799, 2000 WL 33653438, Smalls, C.J. (July 7, 2000) (quoting *Jones*, 745 A.2d at 861 (Del. 1999)).

IV. Discussion.

The first legal issue pending before the Court is whether there was a reasonable articulable suspicion to justify Defendant's seizure. Second, the Court must determine the applicability of the Community Care Doctrine to instant facts. The

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3 The legal standard for the traffic stop is the crux of the instant case. The quantum of evidence required for reasonable articulable suspicion is less than that of probable cause. *Downs v. State*, 570 A.2d 1142, 1145 (Del. 1990). The former requires that an objective standard be met: "would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *Terry*, 392 U.S. at 22. "In justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* at 21.

Court must consider the totality of the circumstances by examining the officer's ability to point to specific and articulable facts, taken with rational inferences that could reasonably warrant the limited intrusion by Trooper Pantalone. For the reasons stated below, this Court concludes that there was no reasonable articulable suspicion to warrant the seizure of the Defendant. Nor does the Community Care Doctrine apply to the facts of this case. Assuming aguendo it does, once Trooper Pantalone assured himself the defendant was not in peril, in need of assistance, the caretaking function was over and unless reasonable articulable suspicion no longer existed, further detention was not necessary or warranted in this case.

In closing statements, the State contends that Trooper Pantalone's investigatory stop is permissible under the Community Care Doctrine because there was "objective, specific and articulable facts" suggesting that the defendant was in "peril, distress or need of assistance" citing *William v. State*, 962 A.2d 210 (Del. 2008) (See paragraph 6, State's Response to the Motion to Suppress).

At the suppression hearing, although not specifically required in the *Williams* decision, Trooper Pantalone did not testify he was familiar with the Community Care Doctrine. It is, however, not required. However Trooper Pantalone also did not provide testimony or any evidence which the Court draw "objective, specific and articulable facts" that the defendant was in fact, in peril, distress or need of assistance. Instead, after his initial questioning, if defendant was driving or had been driving, Trooper Pantalone provided candid testimony he was investigating the defendant for violations of the law. The defendant awoke and answered all of his questions. Once

the caretaker function was over, Trooper Pantalone was candid to the Court when he testified he could not articulate any crime pending previously committed, or about to be committed, or committed by the defendant when questioned by the defense.

In reviewing the *Williams* decision, the Court must note as follows:

> As the United States Supreme Court has explained, under the Fourth Amendment "police can said to have seized an individual 'only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed he was not free to leave'."

See Michigan v. Chesternut, 486 U.S. 567, 573, 108 S.Ct. (1975); 100 L.Ed. 2d 565 (1988).

Trooper Pantalone testified at the suppression hearing that the defendant was, in fact, not free to leave. In the *Williams* decision, the Court noted there is a specific test to ensure the investigations conducted in Delaware under the Community Care Doctrine are reasonable as follows:

> The Community Care Doctrine has three (3) elements. First, if there are objective, specific and articulable facts in which an experienced officer will suspect a citizen is in apparent peril, distress or need of assistance, the police officer may stop and investigate for the purposes of assisting the person. Second, if a citizen is in need of aid, then the officer may take appropriate action to render assistance or mitigate the peril. Third, once the officer is assured the citizen is not in peril, or is no longer in need of assistance or the peril has been mitigated, the caretaking function is over and any further detention constitutes an unreasonable seizure unless the officer has a warrant or some exception to the warrant requirement applies, such as reasonable, articulable suspicion of criminal activity. (Emphasis supplied).

V. Opinion and Order.

The State argued, after Trooper Pantalone testified no crime was being committed or facts that this case falls under the Community Care Doctrine. It is clear that Trooper Pantalone when questioned about his state of mind he testified that was not rendering assistance or aid to the defendant. Applying the objective standard in the *Williams* decision, not withstanding Trooper Pantalone's subjective testimony, the Court finds that he was quite candid with the Court. There were no objective articulable facts represented by the police officer that would simply invoke the Community Care Doctrine in the instant case. No crime was being committed, had been committed or was about to be committed by the defendant after the caretaking function was over.

Assuming arguendo, the Doctrine applies to the instant case, pursuant to prong three (3) of the *Williams* decision, prong three (3) requires that "once officer is assured that citizen is not in peril or is no longer in need of assistance, the caretaking function is over and any further detention constitutes unreasonable seizure unless officer has warrant, or some exception to warrant requirement applies, such as a reasonable, articulable suspicion of criminal activity." *Williams v. State*, 962 A.2d 210, 219 (Del. 2008). In this case, Trooper Pantalone candidly testified no further crime had been committed, was about to be committed or has committed.[4]

[4] Ultimately, in a situation where a suspect is acting in accordance with the law, it is unreasonable under the 4th amendment of the Delaware Constitution to detain him or her in a way that would constitute a seizure. This case is akin to the situation argued before this Court in *State v. Munzer*, Del. Com. Pl., No. 0805019677, 2008 WL 5160105, Welch, J. (December 9, 2008). In *Munzer*, a police officer ordered Mark J. Munzer (the defendant) out of his vehicle because "he wanted to

At page 4, ¶ III of the State's Cross-memoranda, the State argued that the officer's "continued investigations after his community caretaking function ended was appropriate." However, the five reasons stated had already been established when Trooper Pantalone arrived. In addition, as note d above, when questioned by defense counsel, Trooper Pantalone candidly conceded no crime was being committed, about to be committed, or had been committed by the defendant who was in the passenger seat, not driver's seat. The State omitted this quoloqy in its brief. Hence further "continued investigation" was clearly not warranted.

VI. The Court GRANTS Defendant's Motion to Suppress.

This Court must grant Defendant's Motion to Suppress. "In a Motion to Suppress the State bears the burden of establishing the challenged search or seizure comported with the rights guaranteed by the United States Constitution, the Delaware Constitution and Delaware statutory law. The burden of proof on a Motion to Suppress is proof by a preponderance of the evidence." *Hunter v. State*, 783 A.2d 558 (Del. 2001) (Mem. Op. at 5-6); *State v. Bien-Aime*, Del. Super. Ct., Cr. A. No. IK92-08-321, 1993 WL 138719, Toliver, J. (March 17, 1993) (Mem. Op.) (citations omitted). The State has not met this burden today. Defendant's seizure was thus unlawful.[5]

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know 'what was going on' without reference to any motor vehicle violation." *Id.* at 5. Munzer was stopped after the officer witnessed him turn of his car engine while waiting for a train to pass. Id. at 2. Although the State argued that Munzer had obstructed traffic in violation of 21 *Del.C.* §4130 and failed to maintain a minimum speed in violation of 21 *Del.C.* §4171, the officer's proffer to the Court was without reference of any actual violation of Title 21. *Id.* at 2, 4. The Court concluded in *Munzer* the officer did not have reasonable articulable suspicion that the defendant had committed or was about to commit a crime. *Id.* at 5.

[5] Before concluding, the Court must note hat the State never argued at the suppression hearing that the defendant was driving, operating, or had physical control of this motor vehicle pursuant to 21

The Court therefore **GRANTS** Defendant's Motion to Suppress.

IT IS SO ORDERED this 8th day of June, 2010.

John K. Welch
Judge

/jb

cc: Ms. Diane Healy, Case Manager
CCP, Criminal Division

Del.C. §4177(c)(3). Hence, a predicate element of the statute, 21 *Del.C.* §4177(a) is not present in this case.